

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE:	§	CHAPTER 11
	§	
JA-CO FOODS, INC.	§	CASE NO. 09-16017-DWH

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE
ALTERNATIVE ADEQUATE PROTECTION BY BANK OF VERNON.**

COMES NOW Bank of Vernon (hereinafter "Bank"), a secured creditor, and moves this Court to grant relief from the automatic stay pursuant to 11 U.S.C. §362 to allow Bank to foreclose upon real property upon which Bank has been granted a first priority deed of trust owned by Ernest L. Jacobsen and Donna Jacobsen as accommodation parties for Debtor and repossess and liquidate personal property upon which Bank has been granted a first priority security interest owned by JA-CO Foods, Inc. (hereinafter "Debtor"), security interest, or, in the alternative, for adequate protection pursuant to 11 U.S.C. §361, and in support of the motion states as follows:

JURISDICTION

1. This Court has jurisdiction over this proceeding pursuant to Title 28 U.S.C. §157(b)(2)(G) and 11 U.S.C. §361 and 11 U.S.C. §362. This is a core proceeding.
2. Bank of Vernon is an Alabama banking corporation with its principal offices in Vernon, Alabama.
3. Debtor is a Mississippi business corporation with its principal offices in Columbus, Mississippi.

4. Ernest L. Jacobsen and Donna Jacobsen are individuals residing in Columbus, Mississippi who have also filed a bankruptcy in the United States Bankruptcy Court for the Northern District of Mississippi in Case No. 09-15667-DWH.

PROCEDURAL HISTORY

5. On November 16, 2009, Debtor filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101, et seq.

6. The Debtor is currently managing its affairs as a Debtor-in-Possession pursuant to 11 U.S.C. §§1107 and 1108. No trustee or examiner has been appointed in the Debtor's case at this time.

7. No unsecured creditors committee has been appointed in the case at this time.

8. The first meeting of creditors was held, pursuant to 11 U.S.C. §341 on December 14, 2009.

NOTE 0779

9. On or about April 3, 2008, Debtor executed a renewal note to Bank (hereinafter "Note 0779") in the original principal amount of Six Hundred Two Thousand Fifty-seven and 16/100 Dollars (\$602,057.16) plus interest accruing at a fixed rate of seven percent (7%) with a maturity date of April 3, 2013, at which time the outstanding principal balance and accrued interest, fees and late charges would become due and payable. Bank Proof of Claim 1 of 3 designated Claim Number 32 in this proceeding in the amount of Three Hundred Thousand Three Hundred Nineteen and 09/100 Dollars (\$300,319.09) evidences said indebtedness and the related loan documents and is incorporated herein by reference. A true and correct copy of Note 0779 is attached to said Proof of Claim.

10. Debtor has failed to make the required monthly payments under the terms of Note 0799. As of November 16, 2009, the outstanding balance of Note 0779 was Three Hundred

Thousand Three Hundred Nineteen and 09/100 Dollars (\$300,319.09), as reflected in the affidavit attached to said Proof of Claim.

11. Note 0779 is secured by a first priority security interest in equipment described in the Exhibit "A" attached to the Security Agreement and is further secured by Bank Certificate of Deposit 60718 in the original principal amount of Three Hundred Twenty-nine Three Hundred Nine and 00/100 Dollars (\$329,309.00) (hereinafter "Collateral"). True and correct copies of said security agreement, financing statement and assignment regarding the same are attached to said Proof of Claim.

12. Bank estimates that a liquidation value related to the personal property securing Note 0779 excluding Certificate of Deposit 60718 is equal to approximately Twenty-five Thousand and 00/100 Dollars (\$25,000.00).

13. Note 0779 is cross-collateralized with Note 5888 and 5889 as subsequently discussed herein.

NOTE 5888

14. On or about January 24, 2008, Debtor executed a renewal note to Bank (hereinafter "Note 5888") in the original principal amount of One Hundred Twenty-two Thousand Seven Hundred Seventy-eight and 89/100 Dollars (\$122,778.89) plus interest accruing at a variable rate of Wall Street Prime plus one percent (1%) adjusted daily, which rate is currently four and one-quarter percent (4.25%), with a maturity date of January 23, 2015, at which time the outstanding principal and accrued interest, fees and late charges would become due and payable. Bank Proof of Claim 2 of 3 designated Claim Number 33 in this proceeding in the amount of Ninety-seven Thousand Nine Hundred Twenty-three and 68/100 Dollars (\$97,923.68) evidences said indebtedness and the related loan documents and is incorporated herein by reference. A true and correct copy of Note 5888 is attached to said Proof of Claim.

Debtor has failed to make the required monthly payments under the terms of Note 5888. As of November 16, 2009, the outstanding balance of Note 5888 was Ninety-seven Thousand Nine Hundred Twenty-three and 68/100 Dollars (\$97,923.68), as reflected in the affidavit attached to said Proof of Claim.

15. Note 5888 is secured by a first priority security interest in certain equipment of the Debtor described in the Exhibit "A" to the security agreement, a true and correct copy of which is attached to said Proof of Claim. Bank estimates the equipment pledged as collateral for Note 5888 to have a current liquidation value of Twenty-five Thousand and 00/00 Dollars (\$25,000.00).

16. Said Note is cross-collateralized with Note Nos. 5888 and 5889.

NOTE 5889

17. On or about October 31, 2008, Debtor executed a renewal note to Bank (hereinafter "Note 5889") in the original principal amount of Forty-two Thousand Six Hundred Six and 56/100 Dollars (\$42,606.56) plus interest accruing at a fixed rate of seven and one-half percent (7.5%) with a maturity date of October 30, 2010 at which time the outstanding principal and accrued interest fees and late charges became due and payable. Bank Proof of Claim 3 of 3 designated Claim Number 34 in this proceeding in the amount of Twenty-six Thousand Three Forty-six and 07/100 Dollars (\$26,346.07) evidences said indebtedness and the related loan documents and is incorporated herein by reference. A true and correct copy of Note 5889 is attached to said Proof of Claim as Exhibit "A."

18. Debtor has failed to make the required monthly payments under the terms of Note 5889. As of November 16, 2009, the outstanding balance of Note 5889 was Twenty-six Thousand Three Forty-six and 07/100 Dollars (\$26,346.07), as reflected in the affidavit attached to said Proof of Claim.

19. Note 5889 is secured by a first priority accommodation mortgage from Ernest L. Jacobsen and Donna Jacobsen on real property located in Lamar County, Alabama containing .61 acres more or less (hereinafter "Real Property"). A true and correct copy of said mortgage is attached to said Proof of Claim.

20. On or about May 14, 2008, Bank obtained an appraisal on the Real Property from Reabon Walker, a true and correct copy of which is attached hereto and incorporated herein as Exhibit "A." According to said appraisal, the fair market value of the Real Property as of said date was Thirty-six Thousand Six Hundred and 00/100 Dollars (\$36,600.00). However, due to the current economic conditions, the Bank estimates the current value of the Real Property to be approximately Twenty-five Thousand and 00/100 Dollars (\$25,000.00).

RELIEF REQUESTED

21. The real and personal property pledged to Bank as security for Note 5888, Note 5889 and Note 0779 ("Collateral") are subject to cross-collateralization provisions.

22. As of the petition date, the total amount of indebtedness due Bank was Four Hundred Twenty-four Thousand Eight-eight and 84/100 Dollars (\$424,088.84).

23. Upon information and belief, the total value of the Collateral pledged for all three (3) loans is Four Hundred Four Thousand Three Hundred Nine and 09/100 Dollars (\$404,309.09).

24. Accordingly, there is no equity in the Collateral for the benefit of the estate of the Debtor and retention of the same is burdensome for the Debtor.

25. The retention of the Collateral is not necessary for the successful and reorganization of the Debtor.

26. Debtor's has defaulted on payments on obligations to Bank and to provide Bank with adequate protection payments pursuant to 11 U.S.C. §361.

27. Unless Bank is granted relief from the automatic stay so as to permit recovery of the personal property, allow foreclosure of the Bank's mortgage upon Real Property and offset against the Certificate of Deposit or, in the alternative, receives adequate protection payments in the amount of Eight Thousand Five Hundred and 00/100 Dollars (\$8,500.00) per month beginning immediately, Bank will suffer irreparable harm and injury.

WHEREFORE, Bank moves this Honorable Court to enter an order granting to Bank relief under 11 U.S.C. §362 of the Bankruptcy Code so as to permit Bank to foreclose upon the Real Property securing its claims, in accordance with its mortgage and repossess and sell the personal property securing its claims as well as offset against the Certificate of Deposit securing its claims, and thereafter amend its claims for any deficiency balance which may thereafter remain, and in the alternative, enter an order for adequate protection under 11 U.S.C. §361 requiring the Debtor to immediately remit monthly adequate protection payments to Bank in the amount of Eight Thousand Five Hundred and 00/100 Dollars (\$8,500.00) and grant such other and further relief to the Bank which Bank may be entitled.

/s/ Justin B. Little

Justin B. Little
Attorney for Bank of Vernon
MS Code No. 102038

OF COUNSEL:
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Our File No. 31.0408

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Relief from the Automatic Stay or in the Alternative Adequate Protection by Bank of Vernon has been served upon the following electronically and/or by first class United States mail, property addressed with postage prepaid on February 15, 2010:

Craig M. Geno, Esq.
HARRIS, JERNIGAN & GENO, PLLC
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Ridgeland, Mississippi 39158-3380

Melanie T. Vardaman, Esq.
HARRIS, JERNIGAN & GENL, LLC
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U.S. Trustee
100 West Capitol Street, Suite 706
Jackson, Mississippi 39269

/s/ Justin B. Little
Justin B. Little
Of Counsel for Bank of Vernon

EXHIBITS

EXHIBIT
A

Abstract

PROPERTY APPRAISAL REPORT

Borrower: EBERHART, JACOBSEN
Property Address: HIGHWAY 17 S.
City: YERMON, ALABAMA
County: LAMAR
State: ALA
Parcel ID: 0984
Map Reference: 11-05-16-4
Form No. 3117

SEE DEEDS ATTACHED

Loan Term: 30 yrs.
Interest Rate: 6.75%
Monthly Payment: \$1,358.72
Lender: BANK OF VERMONT
Appraiser: REASON WALKER
Address: P.O. BOX 300, YERMON, AL 35692

VACANT COMM. LOT

Location: Urban [X] Suburban [] Rural []
Soil Type: Urban 75% [X] Suburban 25% to 75% [] Rural 25% []
Growth Rate: Rapid [X] Steady [] Slow []
Property Value: Increasing [X] Decreasing []
Demand/Supply: Shortage [X] In Balance [] Over Supply []
Marketing Time: Under 3 Mos. [X] 4-6 Mos. [] Over 6 Mos. []
Present Land Use: 40% Family [X] 5% Vacant [] 10% Agri. [] 20% Commercial []
Change in Present Land Use: Not Likely [X] Likely []
Productive Occupancy: Decar [X] Tanat []
Single Family Price Range: \$40,000 to \$175,000
Family Age: 5 yrs. to 65 yrs.

Employment Stability: Good Avg. Fair Poor
Convenience to Employment [X] [X] [X]
Convenience to Shopping [X] [X] [X]
Convenience to Schools [X] [X] [X]
Adequacy of Public Transportation [X] [X] [X]
Recreational Facilities [X] [X] [X]
Availability of Utilities [X] [X] [X]
Property Compatibility [X] [X] [X]
Protection from Detrimental Conditions [X] [X] [X]
Police and Fire Protection [X] [X] [X]
General Appearance of Properties [X] [X] [X]
Appeal to Market [X] [X] [X]

WORLD AFFAIR MARKETABILITY OF PROPERTIES IN THE NEIGHBORHOOD, THE PROXIMITY TO EMPLOYMENT, SCHOOLS, AND OTHER AMENITIES IS AVERAGE. THE APPEAL TO MARKET IS AVERAGE.

Dimensions: SEE TAX MAP ATTACHED
Zoning Classification: B-2, GENERAL BUSINESS
Highest and best use: Precast concrete [X] Other (Describe) []
Public: Available [X] Street Access [X] Service/Paved [X] Maintenance [X] Storm Sewer [X] Gas/Electric [X] Water [X] Sewer [X] Underground Elec. & Tel. [X]
Off Site Improvements: Type LEVEL
Size AVERAGE
Shape AVERAGE
View BUSINESS / RESIDENTIAL
Drainage ADEQ.

Comments: (Print or type) This property is located in a HUD identified Special Flood Hazard Area? [X] Yes [] No
UTILITY EASEMENTS, WHICH HAVE NO EFFECT ON THE VALUE OF THE PROPERTY. THE APPRAISER WAS NOT FURNISHED WITH / SURVEY, SEE TAX MAP ATTACHED.

The development has met all three recent rates of population growth and economic conditions in the subject and comparable properties. It is significant that the comparable property is superior to us more than twice the subject property, a plus (+) adjustment is made for increasing the indicated value of the subject. It is significant that the comparable is inferior to us or less favorable than the subject property, a minus (-) adjustment is made for decreasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	HIGHWAY 17 S. VERNON, AL 35692	HIGHWAY 18 W. VERNON, AL 35692	HIGHWAY 17 N. VERNON, AL 35692	HIGHWAY 18 W. VERNON, AL 35692
Frontage in Feet	N/A	0.31 miles	0.50 miles	0.26 miles
Area Data	N/A	\$135,000	\$60,000	\$15,000
Price ACRES	47,522	33,750	71,428	57,692
Date Recd.	PSP/PUB RECORDS	PUBLIC RECORDS/SELLER	PUBLIC RECORDS/SELLER	OFF FILE / IN OFFICE SALE
Date of Sale and Time Adjustment	N/A	08/17/2006 +/- 18 mos.	04/01/2004 +/- 18 mos.	05/24/2003 +/- 18 mos.
Location	SUBURBAN	SUBURBAN	SUBURBAN	SUBURBAN
Condition	JT A + RES ACORN	4 AGC + RES ACORN	84 AGC + COMMA	28 AGC + COMMA
RUND FRONTAGE	GOOD	GOOD	GOOD	GOOD
UTILITIES	AVERAGE	AVERAGE	AVERAGE	AVERAGE
TOWN/SITE PREP	LEVEL / FAIR	SLOPPING / AVG.	LEVEL / GOOD	LEVEL / GOOD
WORKING	B-2	B-2	B-2	B-1
Series or Financing Concessions	N/A	NONE	NONE	NONE
Net Adj. (Note)	CONV.	CASH	CASH	CASH
Indicated Value of Subject		\$103,513	\$15,500	\$18,523
Comments on Market Data:		31,487	44,500	33,923

THE CLOSED SALES DISPLAYED WERE CAREFULLY SELECTED AND ARE CONSIDERED TO BE THE MOST COMPAREABLE AND THE BEST INDICATORS OF MARKET VALUE FOR THIS SUBJECT PROPERTY. MOST WEIGHT IS GIVEN TO COMPAREABLE #3, THE SUBJECT PROPERTY'S COMPATIBILITY TO THE NEIGHBORHOOD IS GOOD.

Comments and Conditions of Appraisals: SEE ADDITIONAL COMMENTS ATTACHED. THIS IS A COMMERCIAL LOT APPRAISAL ONLY. THERE IS NO TIMBER VALUE INCLUDED IN THE BELOW ESTIMATED VALUE. LEGAL DESCRIPTION #1 IS LESS AND EXCEPT LEGAL DESCRIPTION #2. COMMERCIAL LOT SALES ARE SHOWN FOR THIS MARKET AND THE VALUES HAVE DECLINED. THE LOT NEXT TO THE SUBJECT HAS BEEN LISTED AT A \$5,000.00 FOR MORE THAN A YEAR WITH NO SALE.

Final Recommendation: ALL WEIGHT WAS GIVEN TO THE VALUE ESTIMATE DERIVED BY THE SALES COMPARISON APPROACH. THIS APPROACH BEST INDICATES BUYER/SELLER ATTITUDES ON THE OPEN MARKET.

I estimate the market value, as defined, of subject property at \$P MAY 14, 2008, to be \$38,000.00

REASON WALKER
Appraiser
Review Appraiser (if applicable)
Did [] Did Not Physically Inspect Property []